IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WP(C).No. 18169 of 2007(K)

PETITIONER:

K.JANARDHANAN, AGED 52 YEARS,
S/O.KRISHNAN, KARUVARUTHODIYIL HOUSE,
PULIYANANKUNNU POST, CHALAVARA,
OTTAPALAM TALUK.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:
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1. THE KERALA FINANCIAL CORPORATION,
REP.BY ITS CHIEF MANAGER,
PALAKKAD BRANCH, 1ST FLOOR, CENTURY COMPLEX,
MATHA OIL STREET, SULTHANPET, PALAKKAD.

2. DEPUTY TAHSILDAR (RR),
KERALA FINANCIAL CORPORATION,
1ST FLOOR, CENTURY COMPLEX, MATHA OIL STREET,
SULTHANPET, PALAKKAD.

BY ADV. SRI.T.V.GEORGE, SC, KFC
GOVERNMENT PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 18169 OF 2007
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Dated this the 10th day of September, 2007

J U D G M E N T

The prayer in this writ petition is to direct the respondents to release the documents mortgaged by the petitioner to the 1st respondent for the loan availed of by him, which has been closed as per Ext.P8. The objection raised by the first respondent is that despite the closure of the loan account by paying the amount, revenue authorities have not permitted the release of documents. This is for the reason that the petitioner has not remitted the collection charges that are due to the revenue authorities.

2. The contention raised by the petitioner is that since he has settled the liability directly with the 1st respondent, collection charges is not payable. In support of this, the learned counsel for the writ petitioner relies on the decision of this court in **Bhaskaran v. SubRegistrar (2005(3) KLT 150)**. A statement has been filed on behalf of the 2nd respondent, in which, it is stated that in pursuance to the revenue recovery requisition, they

had attached the mortgaged properties and it was at that stage that the petitioner settled the liability directly with the first respondent. According to the 2nd respondent, collection charge is payable. The KFC would also say that in the absence of clearance in this behalf, they are not in a position to release the documents.

3. I have heard the counsel for the writ petitioner and the respondents. Although in this case, revenue recovery machinery was set in notion, the liability was discharged by the petitioner by paying directly to the KFC. Hence recovery was not in pursuance to the revenue recovery action and therefore there is merit in the petitioner's contention. However, a final decision in this regard is not called for.

4. It is based on the notification issued by the Government under Section 71 of the Revenue Recovery Act, the dues of the first respondent is recovered by taking recourse to the provisions of the Revenue Recovery Act. The practice that was prevailing is that, for any such recovery the defaulter was

being made liable for the collection charges as well. While this was the position, by ordinance 51/07, a proviso has been added to Section 71, which is to the following effect.

> "Provided that such specified institution or class or classes of institutions or autonomous bodies, as the case may be, shall be liable to pay collection charges for the recovery of the amounts, at such rate and in such manner, as may be prescribed by the Government."

5. From this, it is evident that collection charges for the recovery of the amount is the liability of the institution, on whose behalf recovery is effected. Prior to the introduction of the proviso, the collection charges were being recovered from the defaulter. With the new proviso in the statute, the liability has become that of the institution concerned. Therefore, the petitioner cannot be saddled with the liability. In view of the above, there is no justification in withholding the documents of title mortgaged by the petitioner.

6. In the circumstances, I dispose of this writ petition directing the 1st respondent to release the documents of the properties mortgaged by the petitioner in respect of the loan

availed by him, as expeditiously as possible, at any rate, within a period of two weeks from the date of receipt of a copy of this judgment.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE.

Rp